White (1875), Fed. Cases No. 18050; *Cotton-Tie Co.* v. *Simmons* (1882), 106 U. S. 89; *American Cotton-Tie Supply Co.* v. *Bullard et al.* (1879), Fed. Case No. 294. There would be nothing inequitable in enjoining the use of a machine which was not sold to be used.

INSURANCE—MUTUAL LIFE INSURANCE—INVALID BY-LAW—WAIVER OF BREACH.—V. was insured in a Wisconsin mutual company, paying a definite premium. The defendant, a Minnesota company, reinsured the Wisconsin company and notified V. that the reinsurance was on the express stipulation that the contract was to be subject to the by-laws of the defendant company, one of which provided for the readjustment of rates. To maintain its reserve, defendant found it necessary to pass a by-law materially increasing V.'s rate, with a proviso that the old rate might still be paid, at the option of the insured, and the insurance proportionately scaled down. V. was duly notified of these proceedings and of the new rate of assessment. For four years he continued to pay the old rate, without comment or protest, and then this action was brought for the breach of the contract to insure on the ground that the passage of the by-law was illegal and a breach of the contract. *Held* (BARNES, J., dissenting), that, by paying the old rate for four years without protest, V. had accepted the scaled-down insurance. *Voss* v. *Northwestern Nat. Life Ins. Co.* (1908), — Wis. —, 118 N. W. 212.

The decision is based on the ground that the member in a mutual company, being both insured and insurer, owes it to his fellow members to make his election seasonably and to let them know how he stands, and it is believed the decision was well made on this ground. It is conceded that if the insured had seasonably protested he could have recovered. This relieves the case of what might have been a troublesome question. The minority opinion is based on the proposition that the insured, having a valid contract of insurance, could proceed to carry out the same and could ignore the "arbitrary and impudent assumption on the part of the insurer" to change the contract obligation. The only authority thoroughly in point is a group of cases growing out of the action of the American Legion of Honor in scaling down a set of $5,000 certificates to $2,000 and making a proportional reduction in assessment. Of these cases, *Supreme Council* v. *Lippincott,* 134 Fed. 824; *Supreme Council* v. *McAlarney,* 135 Fed. 72, and *Clymer* v. *Supreme Council,* 138 Fed. 470, hold that where the certificate holder paid the reduced assessments and then after a lapse of several years sought to rescind the contracts for the wrongful scaling-down, this delay and the payment of the reduced premiums constituted acquiescence in the new insurance. In the *McAlarney* case it was pointed out that during the two years three thousand members had died or dropped out who would have been liable for an assessment to meet McAlarney's claim for damages, while one hundred and twenty-five had joined in ignorance of that claim, thus showing the undoubted equity of the holdings. But in *Supreme Council* v. *Daix,* 130 Fed. 101, also one of these cases, where the member refused to pay the reduced assessment and was expelled from the society, it was held that the mere delay of two years in bringing suit did not prejudice his claim, since at the time of his expulsion

both he and the company considered the contract at an end. This case lays down as dicta the rule followed in the other cases, supra. The principal case could have been easily disposed of on another ground. The company's announcement of the advanced rate was, if a breach at all, simply an anticipatory breach of its contract to insure. *Porter* v. *Supreme Council,* 183 Mass. 326. It is unquestioned law, where a right of action for an anticipatory breach is given, that the injured party has his election either to consider the anticipatory breach a rescission of the contract for which he can immediately sue, or to ignore the anticipatory breach and to proffer performance of his part of the contract and bring his action when the contract matures. *Hochster* v. *De La Tour,* 2 E. & B. 678; *Johnstone* v. *Milling,* L. R. 16, Q. B. Div. 460; *Roehm* v. *Horst,* 178 U. S. 1. But if he does not wish to rescind the contract he must wait till in the regular course of events the cause of action on the contract would arise. *Johnstone* v. *Milling,* supra. Accepting the plaintiff's theory that the continuance to pay the regular premium was an election to stand on the old contract, it would certainly seem that the action in the principal case was prematurely brought. The action should have been on the policy at its maturity. *Blakely* v. *Fidelity Mut. Life Ins. Co.,* 154 Fed. 43. But when the court in the instant case places its decision on the ground that the payment of the old premium was an acquiescence in having the insurance cut down, it, to say the least, treads virgin soil. There is nothing in the dissenting opinion at variance with the Federal cases above cited, for in those cases the payment of a different sum was some positive recognition by the certificate holder of the new scheme and might well be held to be an assent thereto. But in the principal case the insured paid the sum which the original contract called for, and the dissenting judge evidently rests on what seems to be an unanswerable proposition of law that where one by a contract is bound to do certain things, his strict performance cannot by any act of the other party be made to signify anything else than a stand on the contract. The provision in the by-law that the old premium might still be paid and the insurance cut down was an act of the insurer alone in which the insured did not participate. And there is authority for the proposition that a tender of the old premium is a final election to stand on the old contract. *Howland* v. *Continental Life Ins. Co.,* 121 Mass. 499; *Langan* v. *Supreme Council,* 174 N. Y. 266. The large equity of the ground taken in the principal case justifies the decision.

INTERSTATE COMMERCE—POWER OF COURTS TO ENJOIN ENFORCEMENT OF RATES.—The Macon Grocery Co. sought to restrain by injunction the putting into effect of rates imposed by the Atlantic Coast Line R. R., a corporation engaged in interstate commerce and a member of the Southeastern Freight Association, alleging that the rates were unreasonable. A schedule of the rates had been filed with the Interstate Commerce Commission, but had not been passed upon. *Held,* that the power given the Interstate Commerce Commission to determine the reasonableness of rates does not affect the equitable jurisdiction of the Federal Courts to enjoin the enforcement of unreasonable rates, that an injunction will issue and that complainants make complaint to